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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matters of:

RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg
Debtors.

- - - - -x

RESIDENTIAL CAPITAL, LLC, et al.,
Plaintiffs, Adv. No. 13-01343-mg

- against -

UMB BANK, N.A., in its Capacity as
INDENTURE TRUSTEE,
Defendant.

- - - - -x

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, et al.,

Plaintiffs, Adv. No. 13-01277-mg

- against -

UMB BANK, N.A., et al.,
Defendants.

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United States Bankruptcy Court
One Bowling Green
New York, New York

September 24, 2013
9:04 AM

B E F O R E:
HON. MARTIN GLENN
U.S. BANKRUPTCY JUDGE

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Adversary proceeding: 13-01343-mg Residential Capital, LLC et
al v. UMB Bank, N.A., in its Capacity as Indenture Trustee
Telephone Conference Call, on the Record, Re: Discovery Issues.

Adversary proceeding: 13-01277-mg Official Committee of
Unsecured Creditors et al v. UMB Bank, N.A. et al.
Doc# 102 Telephone Conference Call, on the Record, Re:
Discovery Issues.

Transcribed by: Penina Wolicki
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

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A P P E A R A N C E S : (TELEPHONICALLY)

MORRISON & FOERSTER LLP

Attorneys for Debtors
1290 Avenue of the Americas
New York, NY 10104

BY: DAVID S. BROWN, ESQ.
STEFAN W. ENGELHARDT, ESQ.
JAMIE A. LEVITT, ESQ.
MARK D. MCPHERSON, ESQ.

MORRISON & FOERSTER LLP

Attorneys for Debtors
200 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006

BY: ALEXANDRA STEINBERG-BARRAGE, ESQ.
ROBERT SALERNO, ESQ.

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KRAMER LEVIN NAFTALIS & FRANKEL LLP

Attorneys for Official Creditors' Committee

1177 Avenue of the Americas

New York, NY 10036

BY: GREGORY A. HOROWITZ, ESQ.

MUNGER TOLLES & OLSON LLP

Attorneys for Berkshire Hathaway Inc.

355 South Grand Ave.

35th Floor

Los Angeles, CA 90071

BY: THOMAS B. WALPER, ESQ. (TELEPHONICALLY)

MILBANK, TWEED, HADLEY & MCCLOY LLP

Attorneys for Ad Hoc Group of Junior Secured Noteholders

One Chase Manhattan Plaza

New York, NY 10005

BY: GERARD UZZI, ESQ.

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WHITE & CASE LLP

Attorneys for Ad Hoc Group of Junior Secured Noteholders
1155 Avenue of the Americas
New York, NY 10036

BY: J. CHRISTOPHER SHORE, ESQ.
HARRISON DENMAN, ESQ.

AKIN GUMP STRAUSS HAUER & FELD, LLP

Attorneys for UMB Bank
One Bryant Park
New York, NY 10036

BY: DAVID M. ZENSKY, ESQ.

REED SMITH LLP

Attorneys for Wells Fargo
599 Lexington Avenue
22nd Floor
New York, NY 10022

BY: DAVID M. SCHLECKER, ESQ.

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right. This is Judge Glenn on the
3 record. We're in ResCap in the UMB adversary proceedings.
4 It's number 13-01277. I have the list of counsel on the phone.
5 Who wants to begin?

6 MR. SHORE: Your Honor, this is Chris Shore from White
7 & Case. I think I was the one who ultimately suggested to
8 everybody that it may make sense to get on the phone with Your
9 Honor for about ten minutes this morning. And thank you for
10 making time for us. I just think it's helpful with everything
11 going on to keep Your Honor apprised of what's happening and
12 what's coming up, because everything's moving very quick.

13 We have a couple of developments since our last
14 conference on the 11th, and one potential dispute that we will
15 put forward, and I don't know whether the debtors or the
16 committee has anything to add.

17 The first development is we have a new scheduling
18 order that Your Honor signed. We had agreed at the last
19 conference that we were going to shift some dates due to some
20 productions the debtors had made, both with the fact witness
21 depositions and to expert reports.

22 Since that time -- and you may have seen in the order
23 that we had submitted after the conference -- the debtors
24 produced a substantial number of new documents. They had gone
25 through their privilege logs, and to date, have I think,

1 produced about 200,000 pages of e-mails that they had
2 previously withheld. We got them to agree to a mechanism that
3 allows us to review the documents, and if necessary, recall
4 deponents or add additional witnesses based solely on these
5 documents.

6 The debtors are, even as of last night, still
7 producing. We're waiting for an all-clear, where they tell us
8 that they've blown everything out. And we'll make a call as to
9 whether or not we need to either recall witnesses or call some
10 additional fact witnesses. And the order has a mechanism for
11 that.

12 Also we -- and we all saw that Your Honor put in that
13 the Court wants findings of fact and conclusions of law in
14 addition to the post-trial briefing, and we'll get that done
15 for you.

16 The second development is, we took the debtor
17 witnesses last week and we took -- or are taking the third-
18 party witnesses this week in various locations around the
19 country right now. I think the Ally issues are fairly
20 resolved. And to the extent they're not fully resolved now,
21 will be resolved before their depo goes ahead.

22 We have an issue with respect to, as I kind of pre-
23 staged, maybe needing to recall some debtor witnesses. I got
24 about 1,000 e-mails from Mr. Marano after his deposition. I
25 got about 600 from Ms. Horner, the current CFO. And as I said,

1 we're going through that and trying to figure out to what
2 extent do we need to bring them back to ask about those
3 documents.

4 The third development is we all exchanged expert
5 reports at about 11:55 on Friday night. We're all working on
6 rebuttals and we're starting to block out time for the expert
7 depositions. And I don't perceive that there are any issues yet with
8 respect to that. There are a lot of expert reports. There's a
9 lot that needs to be covered. But we're working towards
10 getting all the depositions and rebuttals in, in time.

11 THE COURT: How many experts from each side?

12 MR. SHORE: Well, they -- different experts put in
13 different things. I think we have eleven, and what is it, six
14 from the debtors and the committee?

15 MS. LEVITT: I think it's five.

16 UNIDENTIFIED SPEAKER: Five.

17 MR. SHORE: Five.

18 One issue on the horizon for us is with respect to
19 30(b)(6) witnesses. Given that we had a presumptive limit of
20 ten depositions, as Your Honor knows, we had sent 30(b)(6) notices
21 out to the debtors to tell us who the people were and to bring
22 them prepared. To a person, I believe, the debtors sent them
23 in armed only with their personal knowledge. I don't think any
24 of them talked to other employees to prepare. They weren't
25 shown other people's documents. They weren't told of others'

1 conversations.

2 So on a topic like negotiation of the cash collateral
3 order, we got lots of "I have no information" or "I don't
4 recall", which we're fine with on behalf of -- testimony like
5 that on behalf of the debtors, cordons off areas of inquiry
6 that would have to be addressed at trial. But we do have a
7 concern that the debtors may be seeking to put forward
8 witnesses with personal knowledge at trial.

9 As I said, I don't think the issue's ripe yet. We'll
10 get their trial witness lists. But to the extent they put
11 people on who could have been prepared or could have prepared
12 the 30(b)(6) witness, we're going to have to raise that issue
13 with the judge. I just don't have time in a timed trial to be
14 taking depositions of people on the stand. So as I said, I
15 don't think the issue's ripe yet, but we do have a concern on
16 that.

17 THE COURT: Anything else, Mr. Shore?

18 MR. SHORE: That's it, Your Honor.

19 THE COURT: All right. Mr. Engelhardt, are you going
20 to speak for the debtors?

21 MS. LEVITT: Your Honor, this is Jamie Levitt from
22 Morrison & Foerster on behalf of the debtors. Good morning.

23 THE COURT: Go ahead.

24 MS. LEVITT: Your Honor, I don't believe there's any
25 response needed from us to Mr. Shore's statements. One,

1 they're either statements that were resolved by the parties
2 already or have never been raised with us, and therefore are
3 not ripe for discussion with Your Honor at this time.

4 THE COURT: Okay, that's fine. All right.
5 For the committee?

6 MR. HOROWITZ: Your Honor, Greg Horowitz for the
7 committee. And we agree. I don't think that Mr. Shore has
8 raised any issues.

9 THE COURT: Okay.

10 MR. ZENSKY: Your Honor, it's Mr. Zensky. Could I be
11 heard briefly?

12 THE COURT: Go ahead, Mr. Zensky.

13 MR. ZENSKY: Thank you. Let me just pick up on the
14 last point that Mr. Shore made. With respect to the issues in
15 the committee action, we were also somewhat frustrated by the
16 debtors' failure to prepare the 30(b)(6) witnesses. They
17 basically gave us the people we had also noticed individually,
18 and put forth those people on a variety of topics, but as Mr.
19 Shore said, made no effort to educate them, and as a result, we
20 got a lot of "I don't know", because the only source of
21 information was their personal knowledge.

22 We'll see how that manifests at trial. And I agree
23 with Mr. Shore that it would be inappropriate to have witnesses
24 come and give testimony that would have been called for within
25 the scope of those 30(b)(6) depositions.

1 There was one particular area where there's, I think,
2 a lack of clarity that we may need to follow up with a
3 deposition that would take an hour, I think, at most, and that
4 goes to more coding issues and understanding how certain things
5 might be reflected in the debtors' database. But there's
6 nothing for the Court to resolve on that issue right now.

7 The second point I wanted to make is that we were
8 deeply troubled by the manner in which the witnesses were
9 prepared -- the 30(b)(6) witnesses, in the sense that the
10 debtors made their people available to the committee and let
11 the committee prepare the debtors' witnesses on topics that the
12 debtors have stipulated to.

13 As Your Honor knows, the counts in the committee's
14 action were brought by the committee because the debtor
15 stipulated to our claim amount and our collateral package.
16 It's one thing for the debtors to cheer from the sidelines for
17 the committee. And it's another, I think, to actively
18 facilitate and participate in the committee litigation. And we
19 will certainly address that issue with the Court in our pre-
20 trial filings and at trial. But I didn't want to let this
21 opportunity pass without noting it and that it was
22 objectionable, and I think offensive to us, given the debtors'
23 stipulation.

24 THE COURT: Anything else Mr. Zensky?

25 MR. HOROWITZ: Your Honor?

1 THE COURT: Hold on.

2 MR. SHORE: Your Honor, Gregory Horowitz.

3 THE COURT: Hold on, Mr. Horowitz. Hold on, Mr.
4 Horowitz, hold on.

5 Mr. Zensky, anything else?

6 MR. ZENSKY: No. The only other thing I would say,
7 Your Honor, is that when we attempted to inquire as to the
8 preparation sessions that we were shut down because the debtors
9 and committee claimed common interest. I know the Court has
10 addressed that issue many times in different contexts, but
11 again, it's certain that we don't agree that on issues the
12 debtors have stipulated to, that the debtors have a common
13 legal interest to help the committee prosecute their claims and
14 prep the witnesses collectively to try to trot out the
15 committees facts or themes. That's all, Your Honor.

16 THE COURT: All right, Mr. Horowitz?

17 MR. HOROWITZ: Thank you, Your Honor. We don't think
18 that they've raised any issues. I don't think it's appropriate
19 to ask for the Court to take time out for a conference that
20 does not raise any issues but does nothing other than to --
21 unspecified kvetching.

22 Your Honor, we have a common interest. I don't think
23 there can be any doubt that we have a common interest. They
24 have never raised this issue with me or anyone else on behalf
25 of the committee before.

1 If they are suggesting that we in any way tried to
2 create false testimony, I deeply resent that. And I think
3 there isn't the slightest factual basis for it. And if they
4 have an issue they want to raise with the Court for
5 adjudication, they should do so in the proper manner. I don't
6 think it's appropriate to raise what is a nonissue in this
7 context. I think it's deeply inappropriate.

8 THE COURT: For the benefit of Mr. Zensky and Mr.
9 Horowitz, let me just say, I have so much on my plate, I have
10 this wonderful capacity to seal off and forget anything that
11 doesn't involve issues I have to decide. I'm not being asked
12 to decide anything, so this will be a blank slate after this
13 call.

14 When is our next conference? Do we have one scheduled
15 yet?

16 MR. HOROWITZ: October 7th, I'm told, Your Honor. I
17 think it's at, what, 3 p.m., as I recall. October 7th at 3
18 p.m., Your Honor.

19 THE COURT: Okay. See you then. Thank you very much.
20 We're adjourned.

21 (Whereupon these proceedings were concluded at 9:14 AM)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: September 25, 2013

September 24, 2013

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